

Date of decision: 24-4-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J

(24-4-1996)

Mr. V.H. Desai for the petitioner.
Ms. Sejal Mandavia for respondents.

ORAL JUDGMENT:

The petitioners filed this special civil application for direction to the respondents to pay to the petitioners interest at the rate of 18% from the date of their reinstatement till they receive the amount. The facts which are necessary for disposal of the writ petition,

briefly stated, are as follows:

While the petitioners were serving as unarmed police constables in the City of Ahmedabad, respondent No.2, vide order dated 25th November, 1975, terminated their services with effect from 19th December, 1975. The petitioners felt aggrieved by the termination of their services and approached the City Civil Court, Ahmedabad, by filing regular civil suit No.1789 of 1976. The city civil court decided the civil suit. I may observe that the advocates are taking the matters casually. In para 3.2 the date of termination has been stated as 26th November, 1995. From para 3.3 onwards the number of civil suit has been stated as 3785 of 1976. The advocates do not care to see that there are no typing mistakes in the writ petition before presenting the same before the Court. Be that as it may. After such long time of pendency of the writ petition I do not consider it proper to dismiss the writ petition on this technical ground. Otherwise, looking to the facts stated aforesaid, serious view of the matter is required to be taken.

The civil suit was decreed by the civil court on 16-4-1980, with the direction for reinstatement of the petitioners with full backwages as if the petitioners had been continued in service without any interruption. The decree of the civil court has been challenged by the respondents by filing civil first appeal No.1543 of 1980 before this Court. The appeal has also been dismissed on 4-7-1983. Though the petitioners have been reinstated, they have not been paid their backwages for which they were legally entitled to.

2. The writ petition is practically a writ for execution of the decree passed by the Civil Court which has been confirmed by this Court in first appeal. Writ jurisdiction of this Court under Article 226 of the Constitution of India is not the proper remedy. This court should not permit the extraordinary jurisdiction to be converted into civil court under the ordinary law. The decree passed by the civil court was executable under the provisions of the Code of Civil Procedure, 1908. But, instead of resorting to the remedy available under the statute the petitioner have approached this court by way of this writ petition. The apex court in the case of Swetamber Sthanakwasi Jain Samiti Vs. The Alleged Committee of Management reported in JT 1996(3) SC 21 held that when suit is pending between two parties the interim miscellaneous orders passed by the trial court, against which remedy of appeal or revision is available, cannot be challenged by way of writ petition under Article 226 of the Constitution of

India. It has further been held that where the civil court has jurisdiction to try a suit the High Court cannot convert itself into appellate or revisional court and interfere with the interim/miscellaneous orders of the civil court. Writ jurisdiction is meant for doing justice between the parties where it cannot be done in any other form. As stated earlier, here is a case where for the relief of nature which has been prayed for by the petitioners in this writ petition proper forum is available under the provisions of the Code of Civil Procedure, 1908. Though the petition is not maintainable in view of the latest decision of the Supreme Court, I do not consider it proper at this stage to dismiss the same on this ground. Otherwise the petitioners may be rendered remedyless.

3. The Civil Court passed decree in the present case on 16-4-1980, and it has been affirmed by this Court in first appeal on 4-7-1983. Limitation for execution of the decree is provided upto 12 years under the Limitation Act. In case the writ petition is dismissed on the aforesaid ground, then the petitioners may not have the limitation for execution of the decree. There is another reason in favour of the petitioners. Rule has been issued by this Court in the writ petition way back in the year 1986, and after keeping this matter pending for all these ten years I do not consider it to be in the interest of justice to dismiss the same on the aforesaid ground.

4. On 19th March, 1986 this Court passed the following order:

"Rule. Interim relief to the effect that the respondents shall calculate the backwages payable as per the decree of the City Civil Court in Civil Suit No. 3789/76 (confirmed in Civil First Appeal No. 1543/80) and deposit the same in this Court within four weeks hereof. If the order is not complied with by 19-4-1986, the office is directed to put up this matter on board on 21-4-1986 for further orders."

Ms. Sejal Mandavia, learned counsel for the respondents does not dispute that the amount as ordered by this Court to be deposited as per order dated 19-3-1986 has already been deposited and it is lying deposited in the office of the High Court. So far as the entitlement of backwages is concerned, there is no dispute. It is also not questioned by the respondents, nor they could have disputed it as the decree passed by the Civil Court has been affirmed in the appeal filed by the respondents.

5. In the result this writ petition stands allowed in

terms of the interim order passed by this Court. It is further declared that the petitioners are entitled to the amount which has been deposited by the respondents before this Court in pursuance or order dated 19-3-1986. The Registry is directed to pay the amount to the petitioners on their approaching in terms of the decree of the civil court passed in Civil Suit No.3789 of 1976 and affirmed by this Court in first appeal No.1543 of 1980. Rule made absolute accordingly. No order as to costs.